

CHILD AND FAMILY SERVICES AGENCY**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Director of the Child and Family Services Agency ("CFSA"), acting pursuant to section 2(0) of the Child and Family Services Agency Establishment Amendment Act of 2000, effective April 4, 2001, D.C. Law 13-277, D.C. Official Code § 4-1303.03 (2006 Supp); section 106 of the Grandparent Caregivers Pilot Program Establishment Act of 2005, effective March 8, 2006, D.C. Law 16-69; Mayor's Order 2006-38, dated March 20, 2006; and section 3 of the Safe and Stable Homes for Children and Youth Emergency Amendment Act of 2007, D.C. Act 17-69, effective July 9, 2007 hereby gives notice of her intent to amend Chapter 68 of Title 29 DCMR, "Grandparent Caregivers Pilot Program Subsidies" on an emergency basis.

The emergency action is based upon an immediate need in the District of Columbia for grandparents to receive subsidies in order to care for and to protect the safety and welfare of their grandchildren. The emergency rules were adopted and became effective on August 7, 2007. They will remain in effect for 120 days from the date of adoption, or until publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

The Director also gives notice of her intent to take final rulemaking action to adopt these rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, and following the review by the Council of the District of Columbia (Council) required by section 106 of the Act. Pursuant to that section, the proposed rules will be transmitted to the Council and will become effective upon the Council's approval of the rules by resolution or the expiration of the Council's thirty (30) day review period, whichever occurs first, and publication of a notice of final rulemaking in the *D. C. Register*.

29 DCMR § 6802.1 is amended as follows:

Paragraph (c) is amended to read as follows:

- (c) The applicant has been the child's primary caregiver for at least the previous six (6) months;

Paragraph (e) is amended to read as follows:

- (e) The child's parent has not resided in the applicant's home for at least the most recent six (6) continuous months; provided that a parent may reside in the home without disqualifying the applicant from receiving a subsidy if:
 - (1) The parent has designated the applicant to be the child's standby guardian pursuant to Chapter 48 of Title 16;
 - (2) The parent is a minor enrolled in school; or
 - (3) The parent is a minor with a medically verifiable disability that prevents

him or her from caring for the child;

Paragraph (f) is amended by striking "§ 6804" and substituting "§ 6805" in its place.

Paragraph (g) is amended by striking "§ 6804" and substituting "§ 6805" in its place.

Paragraph (k) is amended by striking "§ 6806" and substituting "§ 6807" in its place.

A new paragraph (l) is added to read as follows:

- (l) The applicant is not currently receiving a guardianship or adoption subsidy for the child.

29 DCMR § 6803.2 is amended as follows:

Paragraph (c) is amended to read as follows:

- (c) Proof that the applicant is the primary caregiver as provided in § 6804;

Paragraph (h) is amended to read as follows:

- (h) Proof that the child's parent has not resided in the applicant's home for at least the most recent six (6) months or proof of the following:
 - (1) The parent has designated the applicant to be the child's standby guardian pursuant to Chapter 48 of Title 16;
 - (2) The parent is a minor enrolled in school; or
 - (3) The parent is a minor with a medically verifiable disability that prevents him or her from caring for the child;

29 DCMR § 6803.5 is amended as follows:

A new § 6803.5 is added to read as follows:

6803.5 Any statement under this section made with knowledge that the information set forth therein is false shall be subject to prosecution as a false statement under D.C. Official Code § 22-2405(a) and punishable by a fine of not more than \$1,000 or imprisonment for not more than 180 days, or both.

29 DCMR §§ 6804 through § 6809 are renumbered as §§ 6805 through § 6810 and a new section § 6804 is added to read as follows:

6804 DOCUMENTATION OF STATUS AS PRIMARY CAREGIVER

6804.1 The applicant shall demonstrate that he or she is the primary caretaker of the child by providing at least one of the following documents:

- (a) A court order granting custody of the child to the applicant;
- (b) A court order granting the applicant standby guardianship of the child, pursuant to D.C. Official Code §§ 16-4801 - 4810; or
- (c) A decree stating that the applicant has adopted the child.

6804.2 If the applicant is unable to provide any of the documents listed in 29 DCMR § 6804.1(a) through (c), the applicant may demonstrate that he or she has been the primary caretaker of the child by providing documentation required in § 6804.4 and at least one of the following documents:

- (1) Records showing that the applicant enrolled the child in school the current or previous school year or is the primary educational contact for the child;
- (2) Immunization or medical records indicating that the applicant is tending to the medical needs of the child. The records provided must be no older than two years old;
- (3) Proof that the applicant has received either Supplemental Security Income or TANF for the child; or
- (4) A letter from any legal, medical, military, law enforcement, social service or similar professional, or the applicant's landlord describing the applicant's status relevant to the child.

6804.3 If the Applicant is establishing eligibility under § 6804.2, he or she, by providing the documentation listed in § 6804.4, shall demonstrate that he or she has become the primary caregiver of the child because both parents are unable to fulfill the duties of a primary caretaker due to at least one of the following situations:

- (a) Death;
- (b) Incarceration;
- (c) Lack of Involvement or Abandonment or Voluntary; Relinquishment of physical custody;
- (d) Separation due to abuse or neglect;
- (e) Active military assignment; or

- (f) Serious illness.

6804.4 If the Applicant is required to establish eligibility under § 6804.2, the applicant shall demonstrate that the situation listed in § 6804.3 has occurred by providing the following documents:

- (a) A death certificate for one or both parents;
- (b) A letter from any legal, medical, military, law enforcement, or social services professional describing the situation;
- (c) A signed statement from the caregiver, sworn under penalty of perjury;
- (d) A court order sentencing a parent to prison or another form of state or federal confinement; or
- (e) A report by CFSA substantiating an allegation of abuse or neglect, or other reports from medical or other professionals establishing that the child has been abused or neglected.

6804.5 The Agency reserves the right to request a home visit if probable cause exists to suspect the documents being provided are fraudulent or that the applicant has misrepresented himself or herself for the purpose of receiving the subsidy.

6804.6 If a home visit is requested, the applicant will be informed that:

- (a) The Agency representative visiting the home is a mandated reporter of child abuse or neglect and that any evidence of abuse or neglect will be reported to the child abuse hotline;
- (b) Any substantiated fraud will be reported to the Office of the Inspector General;
- (c) Upon completion of the home visit, the Agency representative will complete a report stating whether the suspicion of fraud is substantiated by a preponderance of the evidence known to the Agency;
- (d) If the suspicion is not so substantiated, the suspicion may not affect the Agency's decision regarding the application;
- (e) If the suspicion is so substantiated, the Agency may deny the application;
- (f) If the applicant does not submit to a home visit, the Agency may deny the application; and

- (g) The applicant may withdraw their application without repercussion at any time.

§ 6805.6 is amended by striking the phrase “§ 6804.4 or 6804.5” and substituting “§ 6805.4 or § 6805.5” in its place.

Amend § 6806.1 as follows:

6806.1 The amount of the subsidy an applicant is eligible to receive shall be no less than five percent (5%) of the regular daily rate of the subsidy for a long-term permanent Level 1 guardianship subsidy pursuant to Title 29 DCMR Chapter 61, less any TANF or Supplemental Security Income (SSI) benefits received for the child.

§ 6806.2 is amended by striking “§ 6807” and substituting “§ 6808” in its place.

§ 6807.3(b) is amended by striking “§ 6807” and substituting “§ 6808” in its place.

§ 6807.3(d) is amended by striking “§ 6807” and substituting “§ 6808” in its place.

§ 6807.5(b) is amended by striking “§ 6806.4” and substituting “§ 6807.4” in its place.

§ 6809.1 is amended by striking “§ 6808.2” and substituting “§ 6809.2” in its place.

Amend § 6808.4 as follows:

6808.4 (b) Updated criminal background check every two years from the date of the initial application;

§ 6808.4 (c) is renumbered as 6808.4(d) and a new § 6808.4(c) is added as follows:

6808.4 (c) Updated child protection register checks; and

Amend § 6899 (Definitions) as follows:

The definition of "Crime against a Child" is amended as follows:

"Crime against a Child" - A criminal offense which is comparable to:

- (a) Kidnapping of a child, except by a parent;
- (b) False imprisonment of a child, except by a parent;
- (c) Criminal sexual conduct toward a child;
- (d) Solicitation of a child to engage in sexual conduct;

- (e) Use of a child in a sexual performance;
- (f) Solicitation of a child to practice prostitution;
- (g) Any conduct that by its nature is a sexual offense against a child; or
- (h) Production or distribution of child pornography.

The following definition of "Minor" is added after the definition of "legal custody"

"Minor" - An individual who is under twenty-one (21) years of age.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing within 30 days after the date of publication of this notice in the D.C. Register. Comments should be filed with Lindsay Hoffman, Program Manager, Child and Family Services Agency, 400 6th Street, S.W., Washington, DC 20024. Copies of these proposed rules may be obtained without charge at this address.